

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7854 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
Nos. 1 to 5 No.

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RAMESH KAPIL BEHRA

Versus

STATE OF GUJARAT

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Appearance:

MS SUBHADRA G PATEL for Petitioner

SERVED for Respondent No. 3

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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 02/11/96

ORAL JUDGEMENT

This Special Civil Application is directed against the petitioner's detention order dated 2.4.1996 passed by the Police Commissioner, Surat City whereby the petitioner has been detained under the provisions of the Gujarat Prevention of Antisocial Activities Act, 1985. The detention order was executed on 2.4.1996 itself and since then the petitioner is under detention lodged at

Central Prison, Ahmedabad.

This Special Civil Application was filed in this Court on 14.10.1996 and on 15.10.1996 Rule returnable in two weeks time was issued. So far neither any reply has been filed nor any affidavit by the Detaining Authority has been filed.

The grounds of detention enclosed with the detention order show that three criminal cases for the offences under IPC Chapters 16 and 17 were registered against the petitioner. After noticing allegations pertaining to the above three cases against the petitioner, the Detaining Authority has also relied upon the statements made by the witnesses with regard to the incidents dated 24.12.1995, 23.1.1996 and 8.2.1996 wherein the witnesses have stated against the petitioner's involvement in criminal and antisocial activities and the atmosphere of terror was created by the petitioner. On the request of the witnesses for the reasons of their security their identity has been kept secret. The Detaining Authority has opined that the petitioner was engaged in the activities of gundagiri and was a headstrong person. In order to prevent him from continuing his antisocial activities, it was necessary to detain him.

The learned counsel for the petitioner has challenged the detention order on more than one grounds but stress was laid on the point that the allegations and the materials on the basis of which the detention order has been passed against the petitioner do not make out the case of breach of public order and at the most it can be said to be a case of the breach of law and order. Strong reliance has been placed on the Supreme Court decision in the case of M.J.Shaikh Vs. M.M.Mehta, reported in 1995 (2) GLR Pg.1268.

I find that the contention of the learned counsel for the petitioner is fully covered by Mustakmiya's case (Supra). The detention order cannot be said to be based on the grounds germane to the breach of the public order. It is the case of the breach of law and order only. Accordingly, the detention order cannot be sustained in the eye of law.

Accordingly, this Special Civil Application is allowed. The impugned detention order dated 2.4.1996 passed by the Police Commissioner, Surat City is hereby quashed and set aside. The petitioner's detention is declared to be illegal. The respondents are directed to

release the petitioner and set him at liberty forthwith  
if not required in any other case. Rule is made  
absolute.

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